IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6370 OF 2005

Maharashtra State Road Transport Corporation ..Petitioner

Vs.

Shri Bhagwan Ganpat Kale ..Respondent

Mr. G.S. Hegde i/by G.S. Hegde and Associates for petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : November 30, 2007.

P.C.:

1. Heard Mr. Hegde the learned counsel for the petitioner-Corporation. The Corporation is aggrieved by the award passed by the learned Judge of the Labour Court on 1/2/2005 in Reference (IDA) No. 242 of 1992. In the said reference the demand for reinstatement with continuity of service and full backwages during the intervening period was raised by the present respondent which was referred for adjudication under Section 10 read with Section 12 and Section 2A of the Industrial Disputes Act, 1947 to the Labour Court by the Competent Authority. After hearing both the

parties and considering the evidence adduced by them before the Enquiry Officer, the Labour Court held that the workman was guilty of the misconduct, namely, driving of the Corporation Bus while he was not on duty, but the Labour Court further held that the punishment of dismissal from service was grossly disproportionate to the nature of the charge, which was admitted by the workman and more so when the co-workman i.e. regular driver Shri Malhari Kale who was also sitting by the side of the respondent-workman and was let-off by penalty of payment of fine of Rs.100/-. The Labour Court, therefore, by the impugned award declared the termination with effect from 8/4/1991 as illegal and directed reinstatement of the respondent with 50% backwages.

2. Mr. Hegde the learned counsel for the Corporation submits that when the workman himself admitted that he had driven the Bus and he was a public servant, it was not permissible for the Labour Court to examine the issue of proportionality of the punishment and in any case it was immaterial as to what punishment was awarded to the co-driver Shri Malhari Kale. As per Mr. Hegde the learned Judge of

the Labour Court fell in gross errors in holding that the punishment awarded was grossly disproportionate and secondly the dismissal from service was illegal.

3. The workman was to resume his duty on Ghodegaon - Mumbai Bus from Rajgurunagar on 5/12/1990. He was a driver with about 11 years service by then and he was to resume duty on Bus No.MH-12-2004 from Rajgurunagar to Bombay. On the said Bus Shri Malhari Kale was an authorised driver and obviously he was supposed to drive the Bus from Ghodegaon to Rajgurunagar and on his request the respondent-workman drove the Bas from Ghodegaon and continued his duty up to Bombay. It so happened that the respondent-workman is the resident of Ghodegaon where from the Bus started and it was Mr. Malhari Kale who was the regular driver. However, the respondent-workman took charge of the steering and Mr. Malhari Kale was sitting by his side in the driver's cabin. The respondent workman had driven the Bus from Ghodegaon to Rajgurunagar and on this count he was charge-sheeted. In his explanation he admitted that he actually drove the Bus from Ghodegaon to Rajgurunagar but that was at the request of Mr.

Malhari Kale, as he was not feeling well. The Corporation having realised that it was not permissible for Mr. Malhari Kale to hand over the steering to respondent-workman and also sought his explanation and he was let-off by imposing a fine of Rs.100/-. The Labour Court considered this aspect and held that there was no justification in awarding the capital punishment to the respondent-workman.

4. In any case the respondent workman was to take charge of the steering of the very same Bus from Rajgurunagar to Bombay and all that he was guilty of driving the Bus in the earlier patch of journey from Ghodegaon to Rajgurunagar and at the request of authorised driver Shri Malhari Kale who was sitting by his side. The finding of the Labour Court that though the charge was proved against the respondent-workman, the punishment awarded of dismissal from service of a driver who had put in more than 11 years of service was grossly disproportionate to the nature of the charge, cannot be termed as perverse or patently erroneous. Section 11A of the I.D. Act empowers the Labour Court to substitute the punishment awarded by the employer under his managerial authority, in a given case if it is found that the punishment was not

justified in the facts and circumstances of the case. The learned Judge of the Labour Court has elaborately set out the reasoning pointing out that the punishment awarded to the respondent-workman was not justified and it was grossly disproportionate to the nature of the charge admitted by the workman and on the face of the fact that Shri Malhari Kale - co-driver was let-off by imposing penalty of Rs.100/-. In my opinion denial of 50% of backwages is sufficient punishment for the misconduct admitted by the respondent-workman.

5. I do not find any reason to cause interference in the view taken by the learned Judge of the Labour Court in this petition under Article 227 of the Constitution and hence, the petition is rejected. The deposited amount be transferred to the Labour Court and the respondent-workna is allowed to withdraw the same.

(B.H. Marlapalle,J.)